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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: JUUL LABS, INC. PRODUCTS  
LITIGATION

CASE NO. 18-cv-02499-WHO

**DEFENDANT JUUL LABS, INC.'S NOTICE  
OF MOTION AND MOTION TO STAY  
PROCEEDINGS PENDING JPML RULING**

Hon. William H. Orrick  
Hearing Date: September 11, 2019  
Hearing Time: 2:00 p.m.  
Action Filed: April 26, 2018  
Amended Complaint Filed: January 30, 2019

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on September 11, 2019, at 2:00 p.m., before the  
3 Honorable William H. Orrick, III of the United States District Court for the Northern District of  
4 California in the San Francisco Courthouse, Courtroom 2, 17th Floor, 450 Golden Gate Avenue, San  
5 Francisco, California 94102, Defendant JUUL Labs, Inc. (“JLI”) will and does move this Court for an  
6 order staying all proceedings in this matter—except for JLI’s production of documents pursuant to  
7 the Stipulation entered by this Court on August 20, 2019—until further order of this Court following  
8 a decision by the Judicial Panel on Multidistrict Litigation (“JPML”) concerning potential  
9 centralization of the 4 matters before this Court with 25 additional matters.

10 JLI’s motion is based on this Notice of Motion and Motion, the accompanying Memorandum  
11 of Law, the concurrently filed Stipulation to Shorten Time, the Declaration of Austin V. Schwing,  
12 other documents on file in this action, and any oral argument of counsel.

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## I. INTRODUCTION

Defendant JUUL Labs, Inc. (“JLI”) respectfully requests that this Court stay all proceedings in this matter—except for JLI’s production of documents pursuant to the Stipulation entered by this Court on August 20, 2019 (Dkt. 138)—until further order of this Court following a decision by the Judicial Panel on Multidistrict Litigation (“JPML”) concerning potential centralization of the 4 matters consolidated into this proceeding with 25 additional matters.<sup>1</sup> The JPML is set to hear JLI’s motion for centralization under the multidistrict litigation (“MDL”) procedure on September 26, 2019. Courts have repeatedly recognized the propriety of staying proceedings while the JPML considers a motion to consolidate and transfer similar cases to a single transferee court. A stay is particularly appropriate here for several reasons.

Other parties who are not yet present in this action will have an interest in the pleadings and scope of discovery. Plaintiffs' counsel here want to press ahead with this case without waiting for the JPML's decision or coordinating with other plaintiffs or their counsel, most likely out of a desire to continue to control the litigation, but that is not the best approach to the efficient management of these cases. While Plaintiffs' counsel in this action have provisionally been designated interim class counsel, it will not be surprising if other plaintiffs' counsel, who will shortly be on the scene when these cases are MDL'ed, will take the position that they should either supplant or otherwise take an active role in the decision-making of these cases. It is no secret that such political arm-wrestling occurs in many MDLs. Further, those other lawyers are proposing to bring claims and theories that are not yet at issue in this case. For example, several of them propose to bring RICO claims against JLI, Altria Group, Inc. ("Altria") and Philip Morris USA Inc. ("PM USA"). These additional theories and claims, should they proceed, will impact the scope of the pleadings and the discovery that takes place in these proceedings. Further, many of the cases are individual actions, and therefore Plaintiffs' counsel here does not and will not represent those parties.

<sup>1</sup> A full list of the related matters pending transfer for coordination or consolidation before the JPML is attached as Attachment 1.

It is essential that the next round of pleadings in this case is conducted in an orderly and efficient manner, and it would be antithetical to the effective management of this case to ignore that an MDL will significantly alter the landscape of this case. Yet, Plaintiffs' counsel in this proceeding insists that this case should press ahead with amended pleadings, a response to amended pleadings, and broad discovery without coordination with any other actions, and even before the JPML has an opportunity to decide whether to MDL the cases. This Court knows well how much effort has gone into the pleadings in this case, both on the part of the parties and this Court in deciding motions to dismiss, a motion to strike, and a motion to compel arbitration, and it is apparent that there will be another round of pleadings and pleading challenges. JLI submits that it makes no sense for Plaintiff to submit an amended complaint and to require JLI to respond to that complaint before the JPML decides whether to coordinate all of the dozens of cases pending against JLI, which, if coordinated with these cases, likely would necessitate consolidated pleadings. Further, before all interested stake holders are present, it is impossible for JLI to be assured at this stage that any agreements among counsel with respect to discovery would stand. A stay would also avoid potential prejudice to the parties in the other actions who are not currently participating in the parties' discovery discussions. JLI believes the best course is to pause briefly until the MDL is created before the parties progress further in these cases.

It is highly likely that the JPML will transfer all 29 related matters to one court under the MDL procedure. While this coordinated proceeding includes four lawsuits against JLI, other parties have continued to file additional lawsuits against JLI in federal courts around the country. On July 29, 2019, JLI moved the JPML for an order to create an MDL including 10 identified actions, including the 4 at issue here, pursuant to 28 U.S.C. § 1407. Since that initial filing, an additional 19 tag-along cases have been identified as related actions before the JPML, for a total of 29 actions. Some of these actions are putative class actions and others are individual actions. The JPML is set to hear JLI's motion on September 26, 2019. All parties that filed responses to JLI's motion, *including Plaintiffs here*, have agreed that the creation of an MDL is appropriate. Given the number of pending actions, and the broad agreement in support of an MDL, JLI expects that the JPML will grant JLI's pending motion.

1        While JLI has requested transfer of all matters to this Court, other parties have advocated for  
2 transfer to other courts. One of the responding parties has requested that the actions be transferred to  
3 the District of Maryland, while the two other responding parties have requested that at least some of  
4 the cases should be transferred to the District of New Jersey where four cases are pending. *See* MDL  
5 No., 2913, Dkt. Nos. 34, 36, 47. While JLI has advocated to the JPML that it select this district as the  
6 MDL court, that is ultimately an issue for the JPML to decide, and it makes sense to see to which  
7 court these cases are assigned before they progress further.

8        Although centralization of these actions is clearly appropriate under Section 1407, there are  
9 some notable differences among the actions that will impact the scope and issues relevant to this  
10 litigation. For example, some actions include claims against defendants not currently present in this  
11 litigation: 15 of the related actions bring claims against Altria and/or PM USA;<sup>2</sup> 12 assert claims  
12 against Pax Labs, Inc.;<sup>3</sup> and a handful bring claims against retailers of JUUL products.<sup>4</sup> Also, while  
13 12 of the actions, including the four cases involved in this litigation, are class actions,<sup>5</sup> 17 of the  
14 actions are individual personal injury actions.<sup>6</sup> Further, some actions include new and different  
15 claims, including several actions that assert claims based on theories that JLI coordinated with Altria

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18       <sup>2</sup> *See e.g., Beatriz-Alegre v. JUUL Labs, Inc.*, No. 3:19-cv-05174 (N.D. Cal. Aug. 19, 2019);  
19       *NesSmith v. JUUL Labs, Inc.*, No. 8:19-cv-00884-MSS-AAS (M.D. Fla. Apr. 15, 2019)  
19       (Scriven); *M.D. v. JUUL Labs, Inc.*, No. 3:19-cv-00180-GHD-RP (N.D. Miss. Aug. 15, 2019)  
19       (Davidson).

20       <sup>3</sup> *See e.g., Kelly v. JUUL Labs, Inc.*, No. 3:19-cv-17005 (D.N.J. Aug. 21, 2019); *Divello v. JUUL*  
21       *Labs, Inc.*, No. 2:19-cv-16915-BRM-ESK (D.N.J. Aug. 20, 2019) (Martinotti); *Tempel v. JUUL*  
21       *Labs, Inc.*, No. 3:19-cv-00904 (S.D. Ill. Aug. 19, 2019).

22       <sup>4</sup> *See e.g., Bentley v. JUUL Labs, Inc.*, No. No. 5:19-cv-01313-LCB (N.D. Ala. July 15, 2019)  
23       (Burke); *Helms v. JUUL Labs, Inc.*, No. 2:19-cv-00527-ALB-WC (M.D. Ala. June 14, 2019)  
23       (Brasher); *Shapiro v. JUUL Labs, Inc.*, No. 0:19-cv-61548-DPG (S.D. Fla. June 21, 2019)  
23       (Gayles).

25       <sup>5</sup> *See e.g., Murphy v. JUUL Labs, Inc.*, No. 1:19-cv-11755 (D. Mass. Aug. 15, 2019) (Gorton); *R.E.*  
26       *v. JUUL Labs, Inc.*, No. 2:19-cv-00591 (S.D.W. Va. Aug. 13, 2019) (Johnston); *Phillips v. JUUL*  
26       *Labs, Inc.*, No. 2:19-cv-4172 (W.D. Mo. Aug. 21, 2019) (Harpool).

27       <sup>6</sup> *See e.g., Sidlo v. JUUL Labs, Inc.*, No. 3:19-cv-00905 (S.D. Ill. Aug. 19, 2019); *Kelly v. JUUL*  
28       *Labs, Inc.*, No. 3:19-cv-17005 (D.N.J. Aug. 21, 2019); *West v. JUUL Labs, Inc.*, No. 19-cv-  
28       00505-ALB-WC (M.D. Ala. July 16, 2019) (Brasher).

1 to purportedly mislead the public.<sup>7</sup> While JLI believes the new theories advanced in these additional  
2 cases are baseless, there is no doubt that they would impact this litigation if they are permitted to  
3 proceed. It would be premature for Plaintiffs in this case to press ahead with an amended complaint  
4 at this point; it would be turning a blind eye to the inevitable coordination that will need to take place  
5 when these cases are MDL’ed.

6 The ultimate claims and defenses at issue following coordination or consolidation of the 29  
7 matters to one court will affect the appropriate scope of discovery. The scope of discovery under the  
8 Federal Rules of Civil Procedure is defined with respect to the claims and defenses at issue: “Parties  
9 may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or  
10 defense and proportional to the needs of the case....” Fed. R. Civ. P. 26(b)(1). A brief stay of this  
11 action pending the JPML’s decision will prevent the parties and this Court from expending  
12 considerable time and resources negotiating and resolving discovery issues that may need to be  
13 revisited and relitigated once additional actions, claims, parties, and attorneys are involved in this  
14 case.

15 Finally, there is no prejudice to Plaintiffs from the stay requested. JLI previously produced  
16 over 10,000 pages of scientific materials related to the development of JUUL products, documents  
17 and communications related to the packaging and labeling of JUUL products, as well as the materials  
18 that JLI previously produced in its response to the FDA pursuant to Section 904(b) of the Federal  
19 Food, Drug, and Cosmetic Act. In addition, JLI recently produced another 85,000+ pages of  
20 documents, including marketing materials, advertising exemplars from social media and other  
21 sources, and communications related to JLI’s marketing and advertising plans. JLI intends to  
22 continue producing documents pursuant to the Stipulation entered by this Court on August 20, 2019,  
23 including tens of thousands of pages of documents related to social media, marketing, and other  
24 communications. There is no discovery cut-off in this case. A brief stay would strike a common-

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26 <sup>7</sup> See e.g., *Phillips v. JUUL Labs, Inc.*, No. 2:19-cv-4172 (W.D. Mo. Aug. 21, 2019) (Harpool);  
27 *NesSmith v. JUUL Labs, Inc.*, No. 8:19-cv-00884-MSS-AAS (M.D. Fla. Apr. 15, 2019)  
(Scriven); *Quercia v. JUUL Labs, Inc.*, No. 1:19-cv-5664 (N.D. Ill. Aug. 22, 2019).

1 sense balance between ensuring that this case proceeds efficiently while also serving the principle  
2 aims of multidistrict litigation—promoting judicial economy, avoiding duplicative discovery and  
3 inconsistent rulings, and preserving the resources of the court and litigants. *See In re Air Crash near*  
4 *Kirksville, Mo., on Oct 19, 2004*, 383 F. Supp. 2d 1382, 1383 (J.P.M.L. 2005). A brief stay of this  
5 action, pending further order of this Court following the JPML’s decision, is appropriate here.

6 **II. ARGUMENT**

7 Federal courts possess inherent powers to stay proceedings before them. *See Landis v. N. Am.*  
8 *Co.*, 299 U.S. 248, 254–55 (1936) (“[T]he power to stay proceedings is incidental to the power  
9 inherent in every court to control the disposition of the causes on its docket with economy of time  
10 and effort for itself, for counsel, and for litigants.”); *Dependable Highway Express, Inc. v. Navigators*  
11 *Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007).

12 Courts have repeatedly recognized the propriety of staying proceedings while the JPML  
13 considers a motion to consolidate and transfer similar cases to a single transferee court. *See e.g.*  
14 *Good v. Prudential Ins. Co. of Am.*, 5 F. Supp. 2d 804, 809 (N.D. Cal. 1998) (noting that courts  
15 “frequently grant stays pending a decision by the MDL Panel regarding whether to transfer a case”);  
16 *Poff v. McKesson Corp.*, 2013 WL 3949207, at \*2 (N.D. Cal. July 30, 2013) (explaining that a stay  
17 pending resolution of a motion to consolidate before the JPML would “promote judicial economy,  
18 uniformity and consistency in decision making”); *Freitas v. McKesson Corp.*, No. 11-cv-05967-JW,  
19 2012 WL 161211 (N.D. Cal. Jan. 10, 2012) (granting motion to stay pending decision by the JPML);  
20 *Couture v. Hoffman-La Roche, Inc.*, No. 12-cv-2657-PJH, 2012 WL 3042994, at \*2 (N.D. Cal. July  
21 25, 2012) (same); *McCrerey v. Merck & Co.*, No. 4-cv-2576-WQH, 2005 WL 6124182 (S.D. Cal.  
22 Mar. 3, 2005).

23 ***Indeed, many of the related pending actions currently before the JPML have already been***  
24 ***stayed. See*** *NesSmith v. JUUL Labs, Inc.*, No. 8:19-cv-00884-MSS-AAS (M.D. Fla. Aug. 8, 2019)  
25 (Dkt. No. 33) (staying case pending JPML decision); *Shapiro v. JUUL Labs, Inc.*, No. 0:19-cv-  
26 61548-DPG (S.D. Fla. Aug. 15, 2019) (Dkt. No. 27) (same); *Murphy v. JUUL Labs, Inc.*, No. 1:19-  
27 cv-11755 (D. Mass. Aug. 26, 2019) (Dkt. No. 5) (same); *see also* *S.R. v. JUUL Labs, Inc.*, No. 3:19-

1 cv-16659 (D.N.J. Aug. 26, 2019) (Dkt. No. 6) (same); *P.O. v. JUUL Labs, Inc.*, No. 3:19-cv-16631-  
2 FLW-DEA (D.N.J. Aug 26, 2019) (Dkt. No. 4) (same).<sup>8</sup>

3 Where a motion for transfer has been filed with the JPML, courts consider the following  
4 factors to determine whether a stay is appropriate: (1) “hardship and inequity to the moving party if  
5 the action is not stayed;” (2) “the judicial resources that would be saved by avoiding duplicative  
6 litigation if the cases are in fact consolidated;” and (3) “potential prejudice to the non-moving party.”  
7 *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997); *see also Couture*, 2012 WL  
8 3042994, at \*2 (enumerating the same test). All of these factors support a stay of the proceedings  
9 before this Court until after the pending MDL Motion is resolved.

10 **A. There Is A Substantial Risk Of Hardship And Inequity To JLI If A Stay Is Not Granted**

11 If a stay is not granted, Plaintiffs in this case will amend their complaint and JLI will need to  
12 respond to that complaint, most likely with another motion to dismiss. This makes no sense given  
13 that these cases will almost certainly be MDL’ed soon and there will be an injection of new parties,  
14 new theories, and new allegations into these cases. It is extremely common for courts to require  
15 consolidated pleadings in an MDL rather than dozens of complaints and responses. Assuming that  
16 would be the case here, it would be a colossal waste of JLI’s resources to respond to an amended  
17 complaint before we know if these cases will be MDL’ed and, if so, how they will be managed. JLI  
18 will also have to expend considerable, time, energy, and effort negotiating and resolving complex  
19 discovery and pretrial issues that will likely need to be revisited and relitigated if the pending actions  
20 are centralized in this or any other transferee court.

21 While JLI has moved to transfer all actions to this Court, other parties have advocated for  
22 different district courts, and the Panel has discretion to transfer the actions to any district court in the  
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25 <sup>8</sup> JLI has agreed with Plaintiffs in several other cases to stays pending the JPML’s decision and is  
26 in the process of preparing stipulations and motions to that effect, including *R.E. v. JUUL Labs,*  
27 *Inc.*, No. 3:19-cv-16631 (D.N.J.); *Divello v. JUUL Labs, Inc.*, No. 2:19-cv-16915 (D.N.J.);  
*Phillips v. JUUL Labs, Inc.*, No. 2:19-cv-4172 (W.D. Mo.); *Vermillion v. JUUL Labs, Inc.*, No. 4-  
19-cv-05286 (N.D. Cal.); *Quercia v. JUUL Labs, Inc.*, No. 1:19-cv-5664 (N.D. Ill.); *Boyd v.*  
28 *JUUL Labs, Inc.*, No. 4:19-cv-0674-HFS (W.D. Mo.). JLI expects that stay orders will be issued  
in these and other cases involving JLI shortly.

1 country. The parties may waste considerable time and effort litigating discovery disputes and other  
2 matters here, only for this case to be transferred to a different court and a different judge who may  
3 choose to revisit the issues or resolve them differently, requiring duplicative and costly additional  
4 litigation. *See Weaver v. Pfizer, Inc.*, 2014 WL 2002212, at \*4 (noting the harm to the defendant if  
5 required to “relitigate any decisions. . . if the case is transferred to the MDL court”); *see also Ernyes-*  
6 *Kofler v. Sanofi S.A.*, No. 5:16-cv-07307-EJD, 2017 WL 813506, at \*2 (N.D. Cal. Mar. 2, 2017)  
7 (noting that a stay “might help Plaintiffs avoid unnecessary effort and expense”).

8 Even if the Panel grants JLI’s motion and creates an MDL in this Court, which is the logical  
9 choice, there will be new actions, new parties, new claims, new theories of liability, and new  
10 attorneys pulled into this litigation, altering the scope of this case and the relevant issues the parties  
11 and Court will need to consider in this litigation. The new counsel who most likely will soon be  
12 involved in this litigation may have different views about legal theories, claims, and discovery issues.  
13 It would be inefficient to continue to actively negotiate and attempt to resolve these issues until it is  
14 clear what this case will ultimately look like, and the positions that all interested stakeholders will  
15 take. The parties’ recent discovery dispute regarding the production of documents relating to Altria  
16 helps demonstrate this point. *See* Dkt. 137. As the parties’ discovery letter reflects, Plaintiffs’ and  
17 JLI’s positions and legal arguments on this issue turn on the specific claims, parties, and allegations  
18 currently at issue in this litigation, which govern what documents and issues are relevant to the  
19 action. *See* Dkt. 137. For example, it is relevant to the dispute that Altria is not a defendant in this  
20 lawsuit, nor have Plaintiffs alleged any conspiracy claims regarding Altria. Dkt. No. 137 at 4.  
21 However, in other actions pending before the JPML, plaintiffs have brought claims against Altria.  
22 *See e.g. NesSmith v. JUUL Labs, Inc.*, No. 8:19-cv-00884-MSS-AAS (M.D. Fla. Apr. 15, 2019). If  
23 these actions are consolidated with this litigation and these claims are allowed to proceed, the parties  
24 and the Court may need to reassess how to treat some of these documents. Further, plaintiffs’  
25 attorneys in these other actions, and counsel for Altria, a party in several of the cases, may have their  
26 own positions on these discovery issues.

27 Plaintiffs’ position in opposing the stay is that JLI should simply turn over all relevant  
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1 documents so a stay is not warranted. But that is an overly simplistic and unrealistic position.  
2 Relevance is assessed against the claims and defenses in a case; without knowing what claims will  
3 proceed and how, any evaluation of relevance would be challenging at best. Moreover, discovery  
4 requires substantial coordination amongst the parties and they often do not agree on the scope of  
5 discovery. For example, the parties' negotiations regarding custodians and search terms demonstrate  
6 the problem with attempting to negotiate complex discovery issues before all the relevant parties and  
7 attorneys are able to participate. Plaintiffs have proposed that JLI search the records of 189 unique  
8 custodians and have proposed approximately 200 specific search terms, an unwieldy list covering 14  
9 pages that is overly burdensome. JLI has responded with its own proposed list of custodians.  
10 However, there is no assurance that the parties and counsel from the other pending actions will agree  
11 to what either side has proposed be done here, especially because the parties' negotiations are based  
12 on the current claims and parties at issue in this litigation. These absent parties face a clear risk of  
13 prejudice if they are bound by agreements that Plaintiffs and JLI may reach in their absence. And if  
14 they are not bound, then JLI will be prejudiced if it has to renegotiate these time-consuming issues  
15 again after the cases are centralized to accommodate these new parties.

16 The most efficient way to resolve these, and other discovery issues that may arise, is to wait  
17 until it is clear what claims, issues, and parties will be involved in this litigation. Pretending these  
18 significant issues do not exist, which is what Plaintiffs here apparently advocate, is not an efficient  
19 way to manage these cases; it would require unnecessary, burdensome pleading motions and for JLI  
20 and Plaintiffs to expend unnecessary time, effort, money, and resources attempting to prematurely  
21 resolve issues, and it threatens to prejudice JLI and parties not presently before the Court.<sup>9</sup> *See*  
22 *Weaver v. Pfizer, Inc.*, No. 2:14-CV-0818-KJM, 204 WL 2002212, at \*4 (E.D. Cal. May 15, 2014)

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24 <sup>9</sup> The discovery relating to Altria and the parties' search terms negotiations are just two examples.  
25 JLI anticipates similar, additional issues may arise if discovery proceeds now. For example, the  
26 appropriate scope of any discovery relating to the health effects of nicotine in this case is  
27 currently limited by the existing Plaintiffs' alleged symptoms from using JUUL products. But  
plaintiffs in other actions have alleged additional, and more serious health complications, such as  
seizures. *See e.g., NesSmith v. JUUL Labs, Inc.*, No. 8:19-cv-00884-MSS-AAS (M.D. Fla. Apr.  
15, 2019); *Kocourek v. JUUL Labs, Inc.*, No. 3:19-cv-00903 (S.D. Ill. Aug. 19, 2019). Inclusion  
28 of these claims in this action may alter the relevant scope of discovery in this case.

1 (noting burden on defendant to “relitigate any decisions. . . if the case is transferred to the MDL  
2 court”); *Gibson v. Bristol-Myers Squibb Co.*, No. 13-cv-01416-SBA, 2013 WL 2081964, at \*1 (N.D.  
3 Cal. May 14, 2013) (defendant would be prejudiced if forced to “re-litigate issues before the MDL  
4 Panel”). Given the strong likelihood that additional cases will be centralized with this action, any  
5 discovery issues the parties discuss and attempt to resolve now, will likely have to be relitigated,  
6 causing prejudice to JLI and Plaintiffs.

7 A brief stay of the proceedings in this action will preserve the parties’ time and resources and  
8 avoid unnecessary duplicative proceedings.

9 **B. A Stay Would Preserve Judicial Resources and Promote Judicial Efficiency**

10 For the same reasons above, a brief stay would also “save judicial resources and promote  
11 judicial efficiency.” *Couture*, 2012 WL 3042994, at \*2 (citing *Rivers*, 980 F. Supp. at 1360-61).  
12 Any time and effort the Court spends on these proceedings now may be made redundant if this  
13 litigation is transferred to a different district court. *See Fuller v. Amerigas Propane, Inc.*, No. 9-cv-  
14 2493-TEH, 2009 WL 2390358, at \*2 (N.D. Cal. Aug. 3, 2009) (“There is simply no reason for this  
15 Court to expend its time and energy on these cases until the pending motion before the [JPML] is  
16 resolved, as transfer of this matter to another court would render redundant the efforts of this  
17 Court.”); *Rivers*, 980 F. Supp. at 1360-61 (granting request for stay pending JPML ruling and holding  
18 that a “great deal of this Court’s time and energy” would be saved by a stay).

19 In addition, even if the cases are ultimately transferred here, it does not make sense for this  
20 Court to expend its resources on pleadings, pleading motions, and discovery management now when  
21 significant changes to the scope and structure of this litigation may be just around the corner. *See*  
22 *Mandrigues v. World Sav., Inc.*, No. 07-4497, 2008 WL 5221074, at \*2 (N.D. Cal. Dec. 12, 2008)  
23 (Fogel, J.) (finding that judicial economy favored grant of a stay pending JPML ruling even though  
24 the court anticipated it would receive the coordinated actions); *Jennings v. Fresenius USA Inc.*, No.  
25 13-cv-03795-WHO, 2013 WL 5487224, at \*2 (N.D. Cal. Oct. 2, 2013); *see also Ernyes-Kofler v.*  
26 *Sanofi S.A.*, 2017 WL 813506, at \*2 (N.D. Cal. Mar. 2, 2017) (noting that courts “frequently grant  
27 stays pending a decision by the MDL Panel regarding whether to transfer a case,” and explaining that

1 a stay pending resolution of a motion to transfer before the JPML would “conserve judicial  
2 resources,” avoid “duplicative discovery and motion practice,” and avoid “inconsistent rulings”);  
3 *Grove v. Organon USA, Inc.*, No. 13-2138-SC, 2013 WL 3286225, at \*1 (N.D. Cal. June 27, 2013)  
4 (holding that “staying the case promote[d] judicial economy and uniform decision-making”). It is  
5 likely that these cases will soon be part of an MDL, and there will be additional defendants, plaintiffs,  
6 and counsel raising issues related to pleadings, discovery, scheduling, and case management. It  
7 makes good sense to wait until those parties are present before plowing ahead with this proceeding.

8 Rather than needlessly taxing this Court’s resources by forging ahead before the JPML’s  
9 decision is clear and the scope of this litigation has crystalized, the Court should briefly stay these  
10 proceedings to preserve judicial resources and to ensure efficient resolution of the proceedings.

### 11 C. A Brief Stay Would Not Prejudice Plaintiffs

12 Finally, there will be no “prejudice to the non-moving part[ies]” should the proceedings in  
13 these actions be stayed. *Rivers*, 980 F. Supp. at 1360. All JLI seeks through this motion is a brief  
14 stay until the JPML issues its decision on the motion to transfer and the cases can be coordinated and  
15 appropriately structured. The motion will be heard at the Panel’s next session on September 26,  
16 2019, and a decision will likely be rendered shortly thereafter. Further, while the stay is pending, JLI  
17 will continue to produce documents previously produced to certain governmental agencies,  
18 regulators, and other entities pursuant to the parties’ stipulation, entered by this Court on August 20,  
19 2019. *See* Dkt. No. 138. Plaintiffs will have tens of thousands of documents to review during this  
20 brief stay. Plaintiffs can also use that time to make progress in gathering and producing the  
21 documents related to Plaintiffs, almost none of which have been produced in this case.

22 Such a brief stay would cause “no meaningful prejudice” to Plaintiffs, particularly where, as  
23 here, “any delay caused by this stay will be of very short duration.” *Fuller*, 2009 WL 2390358, at \*1  
24 (finding “no meaningful prejudice . . . to Plaintiff” as a result of a stay where the JPML was  
25 “expected to hear [the] matter within a few months” and a stay was “unlikely to cause the degradation  
26 of memories or the loss of material evidence”); *Couture*, 2012 WL 3042994, at \*3 (finding that a  
27 short stay would not prejudice Plaintiffs); *Good*, 5 F. Supp. 2d at 809 (finding that stay of

1 case pending JPML transfer decision would not prejudice the plaintiff where the stay “would likely  
2 be brief”); *see also Rosenfeld v. Hartford Fire Ins. Co.*, No. 88-cv-2153-MJL, 1988 WL 49065, at \*2  
3 (S.D.N.Y. May 12, 1988) (while Plaintiffs “may suffer some initial delay, once the cases are  
4 coordinated and the defendants are able to respond to all the complaints in a coordinated manner,  
5 more time may be saved than was lost”). This is especially true given that JLI plans to produce tens  
6 of thousands of documents to the plaintiffs during this brief period in accordance with the parties’  
7 August 20, 2019, stipulation, and that there is no discovery cut-off set in this case. Indeed, we do not  
8 even have an operative pleading in this case given that the Court granted-in-part JLI’s motion to  
9 dismiss on August 23, 2019, and Plaintiffs have not yet filed an amended complaint. A stay will  
10 strike a common-sense balance between ensuring that the litigation continues to move forward  
11 efficiently while avoiding time consuming, premature, and potentially fruitless negotiations and  
12 discovery disputes.

13 **I. CONCLUSION**

14 For the foregoing reasons, JLI respectfully requests that this Court stay all proceedings in this  
15 matter—except for JLI’s production of documents pursuant to the Stipulation entered by this Court  
16 on August 20, 2019—until further order of this Court following a decision by the JPML on the  
17 motions to consolidate and transfer.

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1 Dated: August 28, 2019

Respectfully submitted,

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## ATTACHMENT 1

The following 29 actions pending in [14] federal district courts across the country have been identified as related actions for the purposes of JLI's pending motion to transfer before the JPML:

## **Northern District of California**

- *In re: JUUL Labs, Inc. Products Litigation*, No. 3:18-cv-02499-WHO (N.D. Cal. Apr. 26, 2018) (Orrick)
  - a. *Colgate v. JUUL Labs, Inc.*, No. 3:18-cv-02499-WHO (N.D. Cal. Apr. 26, 2018)
  - b. *Viscomi v. JUUL Labs, Inc.*, No. 3:18-cv-06808-WHO (N.D. Cal. Aug. 31, 2018)
  - c. *J.Y. v. JUUL Labs, Inc.*, No. 3:18-cv-06776-WHO (N.D. Cal. Oct. 10, 2018)
  - d. *Zampa v. JUUL Labs, Inc.*, No. 3:19-cv-02466-WHO (N.D. Cal. Nov. 5, 2018)
- *Swearingen v. JUUL Labs, Inc.*, No. 4:19-cv-04424-DMR (N.D. Cal. May 22, 2019) (Ryu)
- *Beatriz-Alegre v. JUUL Labs, Inc.*, No. 3:19-cv-05174-LB (N.D. Cal. Aug. 19, 2019) (Beeler)
- *G.S. v. JUUL Labs, Inc.*, No. 3:19-cv-05224-TSH (N.D. Cal. Aug. 21, 2019) (Hixson)
- *Vermillion v. JUUL Labs, Inc.*, No. 4:19-cv-05286-DMR (N.D. Cal. Aug. 23, 2019) (Ryu)

## **Southern District of New York**

- *D.P. v. JUUL Labs, Inc.*, No. 7-18-cv-05758 (S.D.N.Y. June 26, 2018) (Seibel)

## **Middle District of Florida**

- *NesSmith v. JUUL Labs, Inc.*, No. 8:19-cv-00884-MSS-AAS (M.D. Fla. Apr. 15, 2019) (Scriven)
- *Pippen v. JUUL Labs, Inc.*, No. 6:19-cv-01671 (M.D. Fla. Aug. 27, 2019)

## **Southern District of Florida**

- *Shapiro v. JUUL Labs, Inc.*, No. 0:19-cv-61548-DPG (S.D. Fla. June 21, 2019) (Gayles)

## Middle District of Alabama

- *Helms v. JUUL Labs, Inc.*, No. 2:19-cv-00527-ALB-WC (M.D. Ala. June 14, 2019) (Brasher)
- *West v. JUUL Labs, Inc.*, No. 19-cv-00505-ALB-WC (M.D. Ala. July 16, 2019) (Brasher)

## **Northern District of Alabama**

- *Bentley v. JUUL Labs, Inc.*, No. No. 5:19-cv-01313-LCB (N.D. Ala. July 15, 2019) (Burke)

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2 **District of New Jersey**

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- *S.R. v. JUUL Labs, Inc.*, No. 3:19-cv-16659 (D.N.J. Aug. 12, 2019) (Shipp)
- *P.O. v. JUUL Labs, Inc.*, No. 3:19-cv-16631-FLW-DEA (D.N.J. Aug 13, 2019) (Wolfson)
- *Divello v. JUUL Labs, Inc.*, No. 2:19-cv-16915-BRM-ESK (D.N.J. Aug. 20, 2019) (Martinotti)
- *Kelly v. JUUL Labs, Inc.*, No. 3:19-cv-17005-FLW-DEA (D.N.J. Aug. 21, 2019) (Wolfson)

7 **Southern District of West Virginia**

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- *R.E. v. JUUL Labs, Inc.*, No. 2:19-cv-00591 (S.D.W. Va. Aug. 13, 2019) (Johnston)

10 **District of Massachusetts**

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- *Murphy v. JUUL Labs, Inc.*, No. 1:19-cv-11755 (D. Mass. Aug. 15, 2019) (Gorton)

13 **Northern District of Mississippi**

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- *M.D. v. JUUL Labs, Inc.*, No. 3:19-cv-00180-GHD-RP (N.D. Miss. Aug. 15, 2019) (Davidson)

16 **Northern District of Illinois**

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- *Quercia v. JUUL Labs, Inc.*, No. 1:19-cv-5664 (N.D. Ill. Aug. 22, 2019) (Kennelly)

19 **Southern District of Illinois**

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- *Kocourek v. JUUL Labs, Inc.*, No. 3:19-cv-00903-SMY-RJD (S.D. Ill. Aug. 19, 2019) (Yandle)
- *Tempel v. JUUL Labs, Inc.*, No. 3:19-cv-00904-SMY-RJD (S.D. Ill. Aug. 19, 2019) (Yandle)
- *Sidlo v. JUUL Labs, Inc.*, No. 3:19-cv-00905-SMY-RJD (S.D. Ill. Aug. 19, 2019) (Yandle)

22 **Southern District of Indiana**

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- *McCullough v. JUUL Labs, Inc.*, No. 1:19-cv-03543-RLY-DLP (S.D. Ind. Aug. 20, 2019) (Young)

25 **Western District of Missouri**

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- *Phillips v. JUUL Labs, Inc.*, No. 2:19-cv-4172-MDH (W.D. Mo. Aug. 21, 2019) (Harpool)
- *Boyd v. JUUL Labs, Inc.*, No. 4:19-cv-0674-HFS (W.D. Mo. Aug. 27, 2019) (Sachs)